

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07CV308-03-MU

WILLIE REESE,)
)
Plaintiff,)
)
v.)
)
Alcohol, Tobacco, Firearms & Explosives)
(ATF&E); Charlotte Mecklenburg Police)
Department)
)
Defendants.)
_____)

ORDER

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983; Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1981); and 28 U.S.C. §1331, filed August 2, 2007. (Document No. 1.)

The crux of Plaintiff's Complaint is that he alleges he is being falsely imprisoned for a case that was fabricated by the Alcohol, Tobacco, Firearms and Explosives Unit and the Charlotte Mecklenburg Police Department. Plaintiff also alleges that he was arrested but never shown a warrant for his arrest. Instead, he was only shown a warrant to search his father's property. By way of relief, Plaintiff asks for monetary damages and to be released from confinement.

A review of Plaintiff's criminal case record reveals that Plaintiff was indicted on May 25, 2005 and charged in a two-count indictment with possession of a firearm by a felon and possession of ammunition by a felon in violation of 18 U.S.C. § 922(g). (Document No. 1, 3:05CR241). On the same day that the grand jury indicted Plaintiff, a warrant was issued for his arrest. (Document No. 2, 3:05cr241). Plaintiff plead guilty to possession of a firearm on February 21, 2006 and was

sentenced on August 31, 2006 to 180 months imprisonment to be followed by a term of 3 years of supervised release.

A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution by a person acting under color of state law. However, neither a § 1983 action nor a Bivens action is the appropriate vehicle to address Plaintiff's claim. Claims affecting the fact or duration of confinement generally may not be litigated through a § 1983 or Bivens action, unless the conviction or sentence has previously been invalidated. Heck v. Humphrey, 512 U.S. 477 (1994); Preiser v. Rodriguez, 411 U.S. 475 (1973). Furthermore, "in order to recover damages¹ for [an] allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 or Bivens plaintiff must prove that the conviction or sentence has been: (1) reversed on direct appeal, (2) expunged by executive order, (3) declared invalid by a state tribunal, or (4) called into question by a federal court's issuance of a § 2254 writ." Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Plaintiff has not demonstrated that his conviction has been invalidated. Since his claim would necessarily imply the invalidity of his conviction or sentence, this Court must dismiss this action. Id.

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Complaint is Dismissed for failure to state a claim for relief.

¹ Plaintiff is seeking damages and requesting that he be released from custody.

SO ORDERED.

Signed: August 7, 2007

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

